

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 1116 be amended to read as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 8-1-2-83 IS AMENDED TO READ AS
- 4       FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ **This section**
- 5       **does not apply to the following:**
- 6       (1) **A corporation organized or operating under IC 8-1-13.**
- 7       (2) **A corporation that:**
- 8       (A) **is organized under IC 23-17; and**
- 9       (B) **has members that are local district corporations (as**
- 10      **defined in IC 8-1-13-23).**
- 11      (3) **An energy utility, as defined in IC 8-1-2.5-2, that provides**
- 12      **service to less than forty thousand (40,000) retail electric or**
- 13      **gas customers.**
- 14      (4) **A telephone company, as defined in IC 8-1-2-88, that**
- 15      **provides service to less than forty thousand (40,000) local**
- 16      **exchange access lines.**
- 17      (5) **A water utility, as defined in IC 8-1-2-1, that provides**
- 18      **service to less than forty thousand (40,000) retail customers.**
- 19      (b) **As used in this section, "control" means the power to direct**
- 20      **the management and policies of a public utility, utility company, or**
- 21      **holding company through:**
- 22      (1) **ownership of voting securities or stock;**
- 23      (2) **the terms of a contract; or**
- 24      (3) **other means.**
- 25      **The term does not include power to direct management and**
- 26      **policies derived from holding an official position or corporate**
- 27      **office with the public utility, utility company, or holding company.**
- 28      **A person that owns, controls, or has the power to vote or the power**
- 29      **to vote proxies that constitute at least twenty percent (20%) of the**
- 30      **total vote power of a public utility, utility company, or holding**
- 31      **company is presumed to have control of the public utility, utility**

company, or holding company.

(c) As used in this section, "holding company" means a company that has control over at least one (1) of the following:

(1) A public utility (as defined in section 1 of this chapter).

(2) A utility company.

(d) As used in this section, "person" means:

(1) an individual;

(2) a firm;

(3) a corporation;

(4) a company;

(5) a partnership;

(6) a limited liability company;

(7) an association;

(8) a trustee;

(9) a lessee; or

(10) a receiver.

(e) As used in this section, "reorganization" means a transaction that results in:

(1) a change in the ownership of a majority of the voting capital stock of a public utility;

(2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;

(3) the merger of two (2) or more public utilities; or

(4) the acquisition by a public utility of substantially all the assets of another public utility.

(f) As used in this section, "utility company" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

(1) conveyance of telegraph or telephone messages;

(2) production, transmission, delivery, or furnishing of heat, light, water, or power; or

(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may not do any of the following without approval of the commission after a hearing:**

(1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~

(2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~

~~And no such~~

**(3) Contract for or effect a reorganization of the public utility.**

**(4) Acquire control of a public utility, utility company, or holding company.**

(h) A person may not acquire control of a public utility or a holding company of a public utility without approval of the commission after a hearing.

(i) A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.

(j) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ **(k)** The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

**(l) The commission shall issue an order not later than one hundred thirty five (135) days after a petition seeking approval is filed under this section. If the commission fails to issue an order within one hundred thirty five (135) days after the petition is filed, the petition is considered approved.**

~~(c)~~ **(m)** Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

~~(d)~~ **(n)** Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such

- 1 stock upon the books of the corporation pursuant to any such contract
- 2 shall be effective for any purpose.".
- 3 Renumber all SECTIONS consecutively.  
(Reference is to EHB 1116 as printed February 20, 2002.)

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Senator LANANE